

Our Ref: LCB/7714.37/EVC

Your Ref:

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31 May 2017

Dear Sirs

**Basement and Ground Floor, 56 Belsize Lane, London NW3 5AR
(the "Property")
Planning Permission ref: 2014/3227/P (the "Permission")**

We are writing in relation to the Permission which was granted by the London Borough of Camden (the "Council") on 24 July 2014 for the change of use of part ground and the basement floors of the Property from a shop (Class A1) to a veterinary surgery (sui-generis). Three conditions are attached to the Permission including Condition 3 (the "Personal Condition") which states as follows:-

"This permission is personal to Mr Brendan Robinson and shall endure for the period of their occupation only. On Mr Brendan Robinson vacating the premises the use of the entire ground and basement floors shall revert to A1 retail. Reason: In recognition of the special circumstances of the applicant and to accord with the London Borough of Camden Local Development Framework Core Strategy, the London Borough the Camden Local Development Framework Development Policies and Camden Planning Guidance 5".

We have assessed the legal position in relation to the imposition of the Personal Condition. Our Summary is set out immediately below which is drawn from our consideration of the legal framework, national planning policy, relevant case law and our subsequent analysis.

Summary

The Personal Condition is unnecessary because it is the Permission itself which is regulating the use of the Property, and not the Personal Condition imposed on the Permission. The part ground and basement floors of the Property can only be used as a veterinary surgery in accordance with the terms of the Permission, and thus the identity of the occupier is irrelevant. There is no special justification for the Personal Condition in these circumstances

and it fails to meet all of the 6 tests in the PPG. As stated in the PPG, any proposed condition that fails to meet any of the 6 tests should not be used.

Legal Framework

1. Section 70 (1) of the Town and Country Act 1990 (the "Act") states that where an application is made to a local planning authority for planning permission they may grant planning permission either unconditionally or subject to such conditions as they think fit, or refuse permission. However, this power must be interpreted in light of material factors such as the National Planning Policy Framework dated March 2012 (the NPPF), the Planning Practice Guidance (PPG) and relevant case law.

Case law governing the exercise of the power to impose conditions is summarised in the judgement of the Supreme Court in *Newbury District Council v Secretary of State for the Environment (1981)* which refers to the earlier judgement in *Pyx Granite Co. Ltd v Ministry of Housing and Local Government (1958)*. Lord Denning said at page 572:

"Although the planning authorities are given very wide powers to impose 'such conditions as they think fit', nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest".

Thus the power to impose conditions is not unlimited. The conditions imposed must be for a planning purpose and not for any ulterior one, and they must fairly and reasonably relate to the development permitted. Also, they must not be so unreasonable that no reasonable planning authority could have imposed them.

2. Section 75(1) of the Act states that any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.

The legislation provides that unless otherwise expressed a planning permission enures for the benefit of the land and may be taken advantage of by anybody. However, a permission may, exceptionally, contain a condition which limits its benefit to a named person or to a category of persons. Such conditions, though lawful in principle, need some special justification since the objective of planning control is to regulate the use of the land, not the persons who may carry out that use (see *East Barnet Urban DC v British Transport Commission (1962)*). A permission with a personal condition attached may be granted for a use which might not normally be allowed on a particular site, but which is granted exceptionally on strong compassionate or personal grounds. One such example is found in the case of *South Buckinghamshire District Council & Anor v Linda Porter (2004)* where a personal permission was granted to Linda Porter to occupy a mobile home in the

Green Belt due to her status as a gypsy, her chronic ill health and the lack of alternative sites in the area.

National Planning Policy

National planning policy in relation to the use of conditions is currently set out in the NPPF and the PPG.

Paragraph 206 of the NPPF states that planning conditions should only be imposed where they are: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise and; (vi) reasonable in all other respects.

This policy requirement is referred to in the PPG as the 6 tests, all of which must be satisfied each time a decision to grant planning permission subject to conditions is made. Paragraph 21a-004 of the PPG states that any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it, or agrees to it, or it is suggested by members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. Furthermore, clear and precise reasons must be given by the local planning authority for the imposition of every condition.

With regards to personal permissions, Paragraph 21a-015 states the following:-

“Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would normally not be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition used to grant planning permission solely on the grounds of an individual’s personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building, but might, for example, result from enforcement action which would otherwise cause individual hardship.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company”.

It is clear from previous appeal decisions that a personal condition can be removed just like any other condition if it is or becomes inappropriate. In one appeal decision (1982 JPL 543), a condition restricting the occupation of the office building known as Queensland House in the Strand, London to occupation by the Government of Queensland, to enable the Greater London council to have control over the future

of the building if the Government of Queensland gave it up, was removed by the Secretary of State as being inappropriate some 17 years after its imposition.

In another appeal decision, where permission was granted for a storage use solely for the benefit of the then named occupier, to prevent an increase in traffic which might be generated by the establishment of a haulage type depot, and the named occupier gave up the business, the condition was removed as an unreasonable restraint upon a small local enterprise. The Secretary of State was of the view that the restriction to a storage use on its own was sufficient to prevent an increase in traffic.

Relevant Case law

1. *R (on the application of Teresa Sienkiewicz) (Claimant) v South Somerset District Council (Defendant) and Probiotics International Ltd (Interested Party) 2013*

In this case the Claimant sought judicial review of the Defendant's decision to grant planning permission to the Interested Party (P) for the erection of a building for B1, B2 and B8 uses on land forming part of a former nursery. P already occupied industrial buildings on part of the nursery site which was allocated for employment use under the relevant local plan. However, the application site itself fell outside the area allocated for employment use. P wished to expand its operations and to erect and operate from another building on the application site. Planning permission was granted subject to conditions, including Condition 8 which stated "*The building hereby permitted shall only be carried out by Probiotics International Ltd (or any successor company) during its occupation of the land subject to this permission*". The reason for imposing this personal permission is that the Defendant wished to control the uses on the application site.

Amongst other things, the Claimant argued that the permission should be quashed as Condition 8 was invalid. The Court agreed that the condition was invalid as it did not serve a planning purpose, was not fairly and reasonably related to the development and was irrational. The condition was said to be imposed to enable the Defendant to control the use of land but it did not in fact enable it to do so. The land could be used only for B1 B2 or B8 purposes, and that was the situation whether the land was occupied by P, a successor company or some other company. No other sensible planning reason had been suggested to limit the range of persons who were able to use the building for B1, B2 or B8 purposes. The planning permission was therefore quashed on this sole ground.

2. *R (on the application of the Council of the London Borough of Harrow) v The First Secretary of State and another (2004)*

This case relates to an application under s.288 of the Act to quash a decision of an inspector who allowed an appeal and granted planning permission for a change of

use of premises to "A1/A3 restaurant, teashop and gelateria on part of the ground floor". The application plans indicated that the front part of the ground floor of the premises would be retained as a retail area, but to the rear there would be a change of use from retail to a restaurant/café area with seating for about 30 persons. During the appeal the inspector was invited to consider imposing a personal condition in relation to the proposed restaurant use, but decided this would be inappropriate in the circumstances. He allowed the appeal and granted planning permission (without a personal condition). During the subsequent s.288 proceedings, the High Court agreed with the inspector that the imposition of a personal condition in these circumstances would have been inappropriate.

Analysis

Prior to the grant of the Permission the Property comprised a ground floor shop unit with basement for storage purposes. The planning application sought to change the rear part of the ground floor and the entire basement floor from a shop (Class A1) to a veterinary surgery (*sui generis*). The majority of the ground floor would remain as a retail unit with the front area dedicated to the retail of animal/pet products.

The officers' delegated report states the following at paragraph 2.4:

"As the parade has incurred a significant loss of A1 retail over the years...it is considered necessary to attach a condition making this permission personal (with the entire unit reverting back to A1 retail upon cessation of usage by the applicant) as this will ensure that the strong retail element is not eroded. Furthermore should any proposed change of business types be sought for the unit in the future, the Council would be in a position to assess these through a planning application. Overall, the attachment of this condition will assist in maintain vitality to the parade, ensuring that the parade's retail element is not diminished".

From the above, the Personal Condition was attached to the Permission in order to safeguard the A1 retail element of the Property. However, there needs to be some special justification for imposing a personal condition because the objective of planning control is to regulate the use of the land, not the persons carrying out the use of the land. In our view, no special justification exists in relation to the Property because it is the Permission itself which is regulating the use of the Property; not the Personal Condition attached to the Permission. The Council acknowledges this in paragraph 2.4 above by its reference to the referring to the fact that any proposed change of the veterinary use at some point in the future will require an express grant of planning permission. This will give the Council the opportunity to properly assess the proposed change of use in light of its local plan policies, regardless of who the occupier of the Property happens to be at any given time.

The circumstances relating to the Property are analogous to those in the case of *Teresa Sienkiewicz* (see above), wherein the High Court quashed the planning permission on the grounds that the personal condition imposed was invalid. The land could only be used for B1, B2 or B8 purposes in accordance with the terms of the planning permission and thus the identity of the occupier was irrelevant. Similarly, the basement and part of the ground floor at the Property can only be used as a veterinary surgery in accordance with the terms of the planning permission, and again the identity of the occupier is irrelevant.

Finally, it follows from the above that the Personal Condition is unnecessary and thus fails to meet all of the 6 tests in the PPG. As stated in the PPG, any proposed condition that fails to meet any of the 6 tests should not be used.

Yours faithfully

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